IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3219 of 2006
Date of decision 16 .1.2007

M/s Sukhna Infomech (Pvt.) Ltd. And another .. petitioners

Versus

The Punjab Financial Corporation and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.RK Handa, Advocate for the petitioners
Mr. Aman Chaudhary, Advocate for the respondents.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 8.5.2001 (Annexure P.1) passed by the Managing Director, Punjab Financial Corporation (respondent corporation). The petitioner has also sought direction to the respondents to restore the unit to them as per the original working condition in accordance with the Restoration Scheme floated by respondent corporation or any other such scheme for one time settlement.

The respondent Corporation issued an order under Section 29 of the State Financial Corporation Act, 1951 (for brevity 'the Act') on 8.5.2001 (Annexure P.1) to the petitioner disclosing that it had by registered Deed of Mortgage dated 17.6.1996 mortgaged its property (moveable and immovable), fully described in the deed, in favour of respondent -corporation for securing repayment of loan of Rs. 63 lacs . The loan was repayable in 72 equal monthly instalments of Rs. 87,500/- each commencing from 15.6.1997. The petitioner had also agreed to pay half yearly interest on the 15th March, 15th June, 15th September and 15th

December each year the first of such payment was to be made on 5.9.1996. The petitioner is stated to have availed loan of Rs. 62 lacs. The petitioner committed some default in the repayment of the stipulated amount due resulting into breach of condition of the clauses of the deed of mortgage. Accordingly respondent corporation expressed apprehension that the petitioner was not able to pay its debts. Therefore, by invoking the provisions of Section 29 of the Act the possession of the mortgaged property was to be taken over for realisation of the outstanding dues of respondent no.1. The possession was taken over on 8.5.2001. Thereafter request made by the petitioner for one time settlement was rejected by the respondent corporation on 6.11.2002 (Annexure P.3). The unit of the petitioner was advertised for sale and accordingly notices to the petitioner were also sent on 6.7.2003 and 8.7.2003 (Annexures P.4 to P.6). On 25.2.2003, the petitioner filed a civil suit in the Court of Addl. Civil Judge (Sr. Division) Rajpura. However, on 14.2.2006, the petitioner withdrew the said civil suit.

In the written statement filed by respondent no.1 the stand taken by respondent corporation is that the unit was not in working condition at the time of taking possession. When an offer was made to the petitioner to approach the respondent- Corporation under the Restoration Scheme vide letter dated 2.2.2005 whereby the petitioner was informed that the unit could be restored to it in accordance with the restoration scheme by one time settlement of Rs. 73.10 lacs as against the outstanding balance of Rs. 190.48 lacs with future interest from 15.12.2004. A copy of the advertisement published by the Corporation was also sent to the Director of the petitioner company informing him to approach the respondent-

Corporation for restoration of the unit on or before 31.3.2005. The afore-mentioned correspondence has been placed on record as Annexures R/.1/3 and R/.1/4. It has further been asserted that on 27.6.2006, the petitioner was informed of the outstanding amount in its loan account amounting to Rs. 2,66,86,674/- (Annexure R/1/6) and the tentative amount under the restoration scheme was worked out to be Rs. 81.14 lacs plus expenses. The petitioner was advised to deposit 10 percent of the tentative settlement amount before 30.6.2006 so that the case of the petitioner could be processed further for restoration. Nothing was done in pursuance to the afore-mentioned offer made by the respondent -corporation. It is strange that in response to the letter dated 27.6.2006 (Annexure R/1/6), the petitioner addressed letters to the respondent-corporation on 11.7.2006, 6.9.2006 and 2.11.2006 (Annexures P.14,15 and 16) attached with Civil Misc. No. 568-560 of 2007 offering to settle by paying Rs. 31,14,000/- claiming that the machinery installed in the factory has been damaged on account of taking possession by the respondent. The afore-mentioned letters have been written without depositing even 10 percent.

After hearing learned counsel for the parties, we are of the considered view that the petitioner is not keen to settle the dues of the respondent corporation as per terms and conditions for one time settlement because as against the huge amount of Rs. 2,66,86, 674/- the Corporation has offer to restore back possession on payment of Rs. 81.14 lacs provided the petitioner deposited 10 percent of the afore-mentioned tentative settlement amount. The petitioner neither deposited 10 percent of the tentative settlement amount nor has made any offer to accept the one time settlement. It is well settled that the Financial Corporations, like respondent

no.1 are not under legal obligation to show indulgence to a chronic defaulter and the decision of the Corporation to take over the mortgaged property including land, machinery and plants is not open to challenge unless it is shown that the decision was mala-fide. For the afore-mentioned view, we place reliance on a judgement of Hon'ble the Supreme Court in the case of Haryana Financial Coprporation v. Jagdamba Oil Mills (2002) 3 SCC 496.

In view of the above, writ petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

16.1.2007
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